

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

NDA MARKET, INC., *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

**Case No. 3:23-cv-00241
JUDGE THOMAS M. ROSE
Magistrate Judge Caroline H. Gentry**

STIPULATION AND ORDER OF SETTLEMENT

WHEREAS Plaintiffs NDA MARKET, INC., d/b/a DEARBORN MARKET (“Plaintiffs”) filed a Complaint on August 24, 2023, requesting this Court review and set aside the final agency decision of Defendants United States of America and the Secretary of the United States Department of Agriculture, Food and Nutrition Services (collectively, “Defendants” or the “FNS”) from disqualifying the Plaintiffs from the Supplemental Nutrition Assistance Program (“SNAP”); and

WHEREAS the Parties desire to resolve all claims in this action, and to obtain an order from this Court encompassing the terms of said settlement:

IT IS STIPULATED AND AGREED, by and between the Parties, through their respective counsel, as follows:

1. This action is dismissed with prejudice and without costs, expenses, or attorney’s fees.
2. In lieu of Plaintiffs’ disqualification from SNAP, Plaintiffs agree to pay FNS a

civil money penalty (“CMP”) totaling \$18,000.00, in twelve (12) installments, with the first payment of \$1,500.00 being due forty-five (45) days after the date Plaintiffs sign this Stipulation of Settlement (“Stipulation”). The following eleven (11) payments will be due every thirty (30) days thereafter, each for the amount of \$1,500.00. Plaintiffs’ payments shall be made through Pay.gov, by completing the electronic version of Standard Form 1114 – Bills for Collection. Plaintiffs will be provided an account number and instructions for submitting payment through Pay.gov promptly following the execution of this Agreement. Accepted payments through Pay.gov are bank account transfer (ACH) or debit/check card.

3. If Plaintiffs fail to make any of the payments referenced in paragraph 2 above, or any portions of those payments, when due, after a seven-day grace period, Plaintiffs shall be deemed in default of this Stipulation, and Plaintiffs agree that: (a) Plaintiffs will be immediately disqualified from SNAP permanently; (b) Plaintiffs waive the right to administrative or judicial review of such disqualification; and (c) Plaintiffs forfeit any portion of the total civil money penalty that Plaintiffs have already paid.

4. Plaintiffs shall make the payments as provided in this Stipulation regardless of whether Plaintiffs continue to operate during the time when the payments are due. Plaintiffs agree to obtain, within thirty (30) days of the Effective Date of this Agreement, a Collateral Bond in favor of FNS in the amount of one-thousand dollars (\$1,000.00) to ensure that program integrity is protected as provided in the SNAP regulations at 7 C.F.R. § 278.1(b)(4). This Collateral Bond shall be maintained and remain in full force and effect for a term of five (5) years from the date of issuance. The original of this Collateral Bond shall be submitted to the United States at the following address:

USDA Food and Nutrition Service
P.O. Box 7228 (USPS only)

Falls Church, Virginia 22040

A copy of the Collateral Bond shall be provided to Defendant's counsel by e-mail. If Plaintiffs fail to submit a Collateral Bond when due, after a seven-day grace period, Plaintiffs shall be deemed to be in default of this Stipulation and agree to the same terms in Paragraph 3.

5. The United States agrees to reinstate Plaintiffs' SNAP authorization within seven (7) business days of this fully executed Agreement.

6. In lieu of immediately submitting a new application for participating in SNAP, Plaintiffs agree to undergo a reauthorization process pursuant to SNAP regulations at 7 C.F.R. § 278.1(n), to commence no earlier than six (6) months from the date Plaintiffs' SNAP authorization is reinstated in this matter. FNS will contact Plaintiffs when the reauthorization is required. The reauthorization will include the submission of a reauthorization application and, in accordance with SNAP regulations at 7 C.F.R. § 278.1(b), may require Plaintiffs to submit documentation to verify the information on the application. The reauthorization will also include an unscheduled store visit to ensure that Plaintiffs meet inventory eligibility requirements. FNS will review Plaintiffs' reauthorization application according to the same eligibility requirements imposed on all retailers, and Plaintiffs understand that they must meet all eligibility requirements in order to participate in SNAP. Failure to meet eligibility requirements or failure to cooperate in the reauthorization process may result in Plaintiffs' withdrawal from SNAP. Such a withdrawal would have no bearing on Plaintiffs' obligation to fully pay the CMP in this matter. In the event Plaintiffs' SNAP authorization is withdrawn for any reason during the reauthorization process, Plaintiffs may file a written request for administrative review in accordance with SNAP regulations at 7 C.F.R. § 279.

7. For the purposes of the reauthorization and any other subsequent applications or

reauthorizations, FNS agrees that it shall not consider Plaintiff's prior disqualification or any related administrative action at issue in the above-captioned matter when determining whether Plaintiffs are eligible to participate in SNAP, except as it related to the payments of the CMP outlined earlier in this Stipulation. FNS will note in its records that the CMP is in lieu of the permanent disqualification of Plaintiffs' authorization to participate in SNAP. No bond shall be required of the Plaintiffs in any future application as a result of this matter or the underlying disqualification.

8. Upon reinstatement of its SNAP authorization and upon any subsequent completion of a SNAP reauthorization, Plaintiffs shall abide by all applicable laws and regulations governing SNAP, including the training of all store owners, officers, agents, managers, and permanent and temporary workers, whether paid or unpaid, in accordance with the retailed training guidelines available at <https://www.fns.usda.gov/snap/retailer/training> and at <https://www.fns.usda.gov/resource/snap-training-expectations-retailers>, and the displaying of the "SNAP Fraud Poster", available at <https://www.fns.usda.gov/snap/report-abuse-snap-poster>, at all times in a conspicuous location with the store that is easily visible to all staff and customers.

9. This settlement does not vacate, but rather supersedes FNS's Final Agency Decision dated July 24, 2023. Nothing in this Stipulation shall be construed as an admission or concession of liability whatsoever by Defendants of Plaintiffs' claims as stated in the Complaint to the instant action, and does not preclude Defendants from taking any administrative, civil, or criminal action against Plaintiffs based on future conduct as permitted by the Food and Nutrition Act of 2008, as amended, the SNAP regulations, or any other application laws or regulations.

10. Plaintiffs acknowledge that they fully understand the waivers of rights set forth in this Stipulation and knowingly and voluntarily waive those rights after a full and complete

opportunity to consult an attorney regarding said waivers and their meanings.

11. The Parties acknowledge, understand, and agree that this Stipulation sets forth the entire agreement between the Parties relating to the subject matter hereof.

12. This Stipulation shall be binding upon the inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

13. It is contemplated that this Stipulation may be executed in several counterparts. All such counterparts and signature pages, together, shall be deemed to be one document.

14. This Court shall retain jurisdiction over this action to enforce this Stipulation.

Dated: October 25, 2023

KENNETH L. PARKER
United States Attorney

s/ Stephanie M. Rawlings

STEPHANIE M. RAWLINGS (0075068)
Assistant United States Attorneys
303 Marconi Boulevard, Suite 200
Columbus, Ohio 43215
Phone: (614) 469-5715
Stephanie.rawlings@usdoj.gov

Dated: October 24, 2023

MESFIN GIORGIS, president
[OWNER'S NAME], Owner
NDA MARKET, INC. d/b/a
DEARBORN MARKET

Dated: October 24, 2023

s/ Michael Gold
GARY C. SCHAENGOLD (0007144)
4 E. Schantz Avenue
Dayton, OH 45409
Phone: (937) 299-9940
Fax: (937) 293-9372
Gschaengold.law@sbcglobal.net

IT IS SO ORDERED.

DATE: 10/26/2023

s/Thomas M. Rose
THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE